

Kurt Siehr*

Günter Blutke, *Obskure Geschäfte mit Kunst und Antiquitäten. Ein Kriminalreport* [Obscure Business with Art and Antiques. A Criminal Report] Links Druck Verlag, Berlin (1990) 182 pp.

'Power tends to corrupt and absolute power corrupts absolutely'. The continued relevance of Lord Acton's observation is shown by the late East German government's attitude toward private art collections: *L'art c'est à moi!* In 1973 the government of the former German Democratic Republic (GDR), normally acting by governmental departments, organisations or enterprises, established one of the few 'private' companies for import and export: the 'Kunst & Antiquitäten GmbH' [Art & Antiques Ltd.]. The book of Günter Blutke (chief reporter of a Berlin newspaper) is devoted to the obscure business of this limited company.

The examples of the early days of the Soviet Union¹ and of Nazi Germany where private art collections and 'degenerate art' were nationalized and confiscated by the State and sold abroad are well known.² The East

German government did not dare to touch public art collections (except for a few pieces of minor importance). Instead, it wanted to obtain private collections through formal legal procedures, which were of an unfair and humiliating character. The Inland Revenue authorities, who had not asked for tax declarations for many years, unexpectedly sent their officials to see a number of art collectors. They seized the collections, evaluated them arbitrarily (because there was no free market for art in the GDR and collectors were forbidden to sell their treasure abroad) and assessed the income, value-added and property tax which had accrued (since at least 1972). The 'Kunst & Antiquitäten GmbH' then took control of collections and sold them to cover the collectors' tax liability. Most of these liquidated East German art treasures were not given to East German museums, but were sold to foreigners for urgently needed hard Western currency.

In several cases the 'expropriated' East German collectors left East Germany before 1989, and it so happened that they found parts of their collection on display in West German antiques shops. In one case a collector brought a suit against an art

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dealer in West Berlin for return of a precious grandfather clock. The West German Federal Supreme Court reversed a Berlin judgment in favour of the plaintiff.³ The case is still pending with the Federal Constitutional Court.

Blutke's book describes the activities of the 'Kunst & Antiquitäten GmbH', the 'expropriating' taxation of East German art collectors by the late GDR and the sad destiny of several victims of the East German tax-raid on art collectors. While all this is (now) history the general experience that States themselves do not always carry out their own statutory duties to protect their national cultural property is however, still important (it may also raise constitutional problems in Germany). They disregard their own policy and, for some reason, they openly or in disguise export their cultural property. This aspect has to be taken into account by the Convention on Stolen or Illegally Exported Cultural Objects in preparation with UNIDROIT in Rome.⁴

Notes

- 1 *Princess Paley Olga v Weisz*, [1929] 1 KB 718 (C.A.); *Stroganoff-Scherbatoff v Weldon*, 420 F. Supp. 18 (S.D.N.Y. 1976); Tribunal de grande

instance de la Seine 12.1.1966 (*Stroganoff-Scherbatoff v Bensimon*), 56 *Revue critique d.i.p.* 120 (1967) with note by Yvon Loussouarn; Amtsgericht Berlin-Schöneberg 5.11.1928, 2 *Rabels Zeitschrift fuer auslaendisches und internationales Privatrecht* 791 (1928) = *Die deutsche Rechtsprechung auf dem Gebiete des internationalen Privatrechts* 1928 no. 16; Landgericht II Berlin 11.12.1928 (*Scherbatov v Lepke*), 3 *Zeitschrift fuer Ostrecht* 1366 (1929) with approving notes by Ernst Isay and Ernst Frankenstein = *Die deutsche Rechtsprechung auf dem Gebiete des internationalen Privatrechts* 1929 no. 9.

- 2 Swiss Federal Court 12.12.1968, 94 *Entscheidungen des Schweizerischen Bundesgerichts* II 297 (*Koerfer v Goldschmidt*).

- 3 Kurt Siehr, 'The Return of Cultural Property Expropriated Abroad' in: *Comparative and Private International Law. Essays in Honour of John Henry Merryman on his Seventieth Birthday* (Berlin 1990) p. 431 – 441 (440).

- 4 Preliminary Draft UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, UNIDROIT 1990 Study LXX-Doc. 19 (August 1990). Kurt Siehr, 'Preliminary Draft Unidroit Convention on Stolen or Illegally Exported Cultural Objects (approved by the UNIDROIT Study Group on the International Protection of Cultural Property at its Third Session on 26 January 1990), (1992) 1 *International Journal of Cultural Property* pp. 252 – 5. Also, pp. 321 – 330, above.